

Family Law In Bahrain

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BAHRAIN CENTER FOR HUMAN RIGHTS
Defending and promoting human rights in Bahrain

About Us



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The Bahrain Center for Human Rights (BCHR) is a nonprofit, non-governmental organization, registered with the Bahraini Ministry of Labor and Social Services since July 2002. Despite an order by the authorities in November 2004 to close it, the BCHR is still functioning after gaining wide internal and external support for its struggle to promote human rights in Bahrain.

The co-founder and former President of the BCHR is Abdulhadi Al-Khawaja, who is currently serving a life sentence in prison for charges related to freedom of speech. The current President is Nabeel Rajab, who is serving a two year prison sentence for his work as a human rights defender. The Acting President is Maryam Al-Khawaja.

For more information, please visit our website:

www.bahrainrights.org

“People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed.”

- 1979 U.N. Convention of the Elimination of all Forms of Discrimination against Women

Bahrain is a signatory of the 1979 U.N. Convention of the Elimination of all Forms of Discrimination against Women, more commonly referred to as [CEDAW](#).

In 2002 Bahrain ratified the convention with “reservations”. This was mostly the nationality clause, Article 9, which holds state signatories responsible for granting women equal rights with men to acquire, change or retain their nationality as well as the right of women to pass their nationality on to their children and husbands.

Bahrain makes five reservations with respect to the following provisions for the Convention:

- 1) Article 2, paragraph two, states that a country should condemn all types of discrimination against women
- 2) Article 9, paragraph two, states that women should enjoy the same rights as men in terms of giving citizenship to their children
- 3) Article 15, paragraph four, states that women should be given the same rights as men in choosing their homes
- 4) Article 16 states the need to provide equal marital rights for females and males, particularly in marriage contracts, raising children and custody
- 5) Article 29, paragraph one, and relates to disputes between two state parties.

Lifting these reservations could mean that Bahrain would finally introduce a family law, which would specify in writing how family issues such as divorces and child custody cases are to be resolved. Bahrain's reservations to CEDAW must be withdrawn.

Overview Of The Major Violations Against Women’s Rights In Bahrain

The most pressing problems faced by women in Bahrain include the following:

Discrimination In The Work Place:

Women are often discriminated against in the workplace and denied senior positions in both the private and public sectors.

Laws prohibit discrimination against women. However, discrimination against women remains systemic, especially in the workplace. Although women held positions in the government if they are loyal to the authorities; in private sector, women remain underrepresented.

Gender discrimination, which is evident throughout the workforce despite the ruling family's attempts to present an image of equality by appointing a small number of loyalist women figures to government positions.

As of December 2013, there were three female Ministers: Mai Al-Khalifa, Minister of Culture; Fatima Al-Blooshi, Minister of Human Rights and Social Development; and Samira Rajab, Minister of State for Information Affairs. Each of these individuals was appointed by the King.

Family Law:

Sunni's and Shia's each have their own Sharia courts that deal with marital conflicts and other personal law issues.

Bahrain is one of the only countries in the MENA/Gulf region without an Islamic family law code that applies to all of its Muslim citizens. In May 2009, Bahrain approved a family law code for the first time (Law No. 19) which applies only to its Sunni citizens.

In Bahraini Shia sharia courts, personal status matters are still decided on a case-by-case basis by judges, who use their own discretion to interpret the Islamic tradition, drawing on Islamic sources.

The Bahraini government has to implement a code for its Shīa citizens; this remains controversial, as family law has become a symbol of Islamic identity, and some Bahraini religious scholars view codification as a foreign imposition or an intrusion on religious authority.

The Family Law organizes the marriage relationship and all matters arising in connection with marriage, such as engagement, dowry, maintenance, parentage, separation, and custody. However, it is uncodified and governed by all-male religious Sharia courts. Influential sections of the religious establishment oppose a codified family law, while the government has recently demonstrated a lack of interest in pursuing the matter.

Meanwhile, the office of the Public Prosecution has resorted to threatening activists who dare to criticize its discriminatory positions and practices.

Women have long been subjected to severe forms of discrimination in Shari'a courts by judges who issued rulings based on their personal explanation of Islamic texts instead of codified law.

The process has been so arbitrary that in some instances women's petitions were turned down even before the plaintiffs had an opportunity to present their case.

Law although surrounding many traditional Shari'a provisions considered unfair to women under international conventions, without protections such as the woman's consent for marriage, woman's ability to include conditions in the marriage contract and the right for separate residence if her husband takes another wife.

Marriage And Family Relations:

The absence of a family law is an issue of top priority. Rules and norms are in place through the court system, but that they are not codified.

Divorce:

Unlike men, women face significant legal, financial, and societal difficulties if they want to obtain a divorce.

Men, on the other hand, have the right to divorce that is effective immediately.

Sunni men only need to orally announce their intent to divorce, while Shia men must record their intent in writing.

However, women must either seek out a judicial divorce based on extremely narrow set of reasons, such

as desertion, or else initiate khula.

Khula is the Islamic practice of divorce initiated by a woman, but it requires the woman to return her dowry.

Some men abuse khula, in certain instances requesting that the wife pays the approximate amount the husband spent on her during the entire marriage. Men often take advantage of the fact that women use this form of divorce because it is faster than the alternatives.

See sample case regarding divorce in the attached appendix, page 12; a case of forced return is on page 13; a case involving khula is on page 14.

Divorce Rights, Guardianship And Custody Rights:

A Bahraini man can divorce his wife for any reason, while women can only request divorce only under certain specific circumstances. It is possible for a woman to seek divorce without the burden of evidence which is a lengthy and arduous process. Even if a woman provides evidence in support of her bid for divorce, still is still required to return her dowry.

A judicial divorce may take years, during which time women may not be financially supported, and the process is not guaranteed to end in a divorce.

Divorced Shia women retain physical custody of their sons until they are seven and their daughters until they are nine.

The new personal status law allows Sunni mothers to retain custody of their daughters until they are 17 years of age or married (whichever comes first) and sons until they are 15

Even if the mother has custody, the father remains as the children's legal guardian.

In determining issues of custody, Bahraini courts consider the parents' religion, place of permanent residence, income, and the mother's subsequent marital status. Priority is generally given to a Muslim father or his nationality

See sample of custody case in the attached index, page 11.

Child Visitation Rights:

Non-custodial parents (both the mother and father) are entitled to visitation by prior arrangement of the competent court.

See page 11 in the appendix for further information.

Inheritance Rights:

Islamic inheritance is complicated and involves the division amongst both the spouse and children. Bahraini inheritance law gives preference to sons, with shares going to sons that are two times greater than shares received by daughters, as per Sharia law.

Women have the right to inherit if she is a Shia and does not have any brothers. However, if a Sunni who has only daughters, the daughters will not receive anything of the deceased father, but the inheritance

will instead go to the brother or another male relative of deceased person.

Violence:

Receiving a divorce and custody of one's children is very difficult for women in Bahrain, even in cases where a husband sexually attacks his wife.

The authorities in Bahrain offer women no protection from their sexually abusive husbands. Only in cases of physical injury will the courts grant a divorce. For those who bear no physical marks, victims of sexual abuse feel helpless, as marital rape is not penalized Bahrain.

Case of domestic violence attached, see appendix page 15.

Violence perpetrated against women represents one of the most dangerous social phenomena in Bahraini society; it is a dangerous indicator of the lacking human and moral values within society. This failure is compounded by the absence of legislation and penal laws to protect women.

Many violently abused women do not report the circumstances of their abuse, feeling ashamed or worried about suspicions in their report, or that they may not be believed or may be exposed to additional violence, or might refuse to report to avoid scandals and fear negative reaction of society. Therefore, the absence of information and accurate statistics does not negate the presence of this dangerous experience from which many Bahraini women suffer

It should be pointed out that there are no laws in Bahrain that criminalize violence imposed on women.

Protection From Gender-Based Violence:

Domestic violence is not specifically addressed in the penal code and spousal rape is not considered a crime. Rape (although not of a spouse) is a crime with a punishment of life in prison.

Rape:

Under Article 353 of the penal code, a rapist may avoid punishment if he agrees to marry his victim, although this is viewed by some as protecting women from shame, the psychological effects of this policy are grave and divorces after such unions are likely. Additionally, the rapist may later initiate a unilateral divorce, thereby avoiding both a rapist's punishment and a husband's responsibilities.

A rapist is therefore able to repeat his crime, knowing he can avoid punishment.

Rape And Domestic Violence:

Rape is illegal, although the law does not address spousal rape. Penalties for rape include life imprisonment and execution in cases where the victim is a minor younger than 16 years old or in cases where the rape leads to the victim's death. There were numerous reports of employers raping female domestic workers, but most victims did not seek legal action since incident cannot be proven in court without the testimony of witnesses to the crime.

Sexual Harassment:

Political, religious, and cultural barriers continue to restrict the free and effective work of NGOs with regard to gender-based violence and marital rights

Nationality:

Children and spouses of Bahraini women married to non-Bahraini men are not entitled to citizenship.

Bahrain's reservation on Article 9 on the granting of nationality to children is being reviewed, and may be withdrawn to ensure equality between men and women on this issue.

There are several cases that deny individuals citizenship due to their family's political activism during the pro-democracy movement. The authorities have also granted citizenship to pro-government individuals in an attempt to change the demographics of the country. See: <http://www.bahrainrights.org/en/node/528>

Bahraini women are unable to pass their citizenship to their non-Bahraini spouses; even though the law permits male Bahraini citizens to transfer their citizenship to their spouse. Moreover, the laws specify that children may only receive Bahraini citizenship from their father, and the child of a Bahraini mother and a foreign father may not receive his mother's nationality.

Discrimination In Testimony:

A woman's testimony as Shari'a court is worth half that of a man's and women's legal claims are treated unequally by the Shari'a judiciary.

The testimony of both sexes is weighted equally in civil and criminal courts, and women are able to bring charges to court without permission from male family members.

Enforcement Of Foreign Judgments:

Custody orders and judgments of foreign courts are not enforceable in Bahrain if they potentially contradict or violate local laws and practices. For example, an order from a foreign court granting custody to a mother may not be honored in Bahrain.

Human Trafficking in Bahrain:

Prostitution is illegal in Bahrain; there was evidence that a number of foreign women, particularly Asian women, were forced into commercial sexual exploitation through deception or intimidation.

Although many women traveled to the country voluntarily, traffickers reportedly used false job offers and physical force to traffic some of them into commercial sexual exploitation.

In cases of forced prostitution, it has been reported that there have been prosecutions of victims and often the victim's sponsor or employer.

The fear of deportation or employer retaliation prevents many victims of trafficking from making complaints to the authorities.

Honor Killings:

Honor killings are punishable under Bahraini law, but Article 334 of the penal code permits a reduced penalty for one who suddenly finds his or her spouse in the act of adultery and immediately assaults or kills the spouse or the spouse's accomplice.

Religion:

Religion is inherited primarily from one's extended family. In a marriage between a Sunni and a Shia, each person is generally permitted to retain his or her own beliefs.

Moreover, all Muslims are encouraged to marry within the faith. Unlike women, Muslim men may take Christian or Jewish spouses.

Apostasy is punishable by death under Sharia law, although Bahrain does not enforce this punishment.

Political Rights And Civic Voices:

Participation by women in the national government and their presence in decision-making positions remains low.

Women are often victims of the country's internal power struggle, sectarian differences, mismanagement of the government, and unfair distribution of national wealth and resources.

In regard to political rights, women in Bahrain have participated in elections both as candidates and as voters. However, only 10 other women out of 40 members have been appointed and not elected in the "Shura" council based on their loyalty to the ruling family.

Women in Bahrain have been receiving education and participating in elections for eighty years now, so the mere participation in elections is not the ultimate goal that Bahraini women hope for, especially if it does not lead to real political participation and empowerment.

Legal Restrictions On Press Freedoms:

Restrictions are not based on gender; the rights of both male and female members of the media are limited.

Judicial System:

In Bahrain, thousands of women and children live their lives at the mercy of an incompetent judicial system and unwritten family laws, struggling for years to get a divorce or child custody, and living under social rejection and hardships.

Appendix

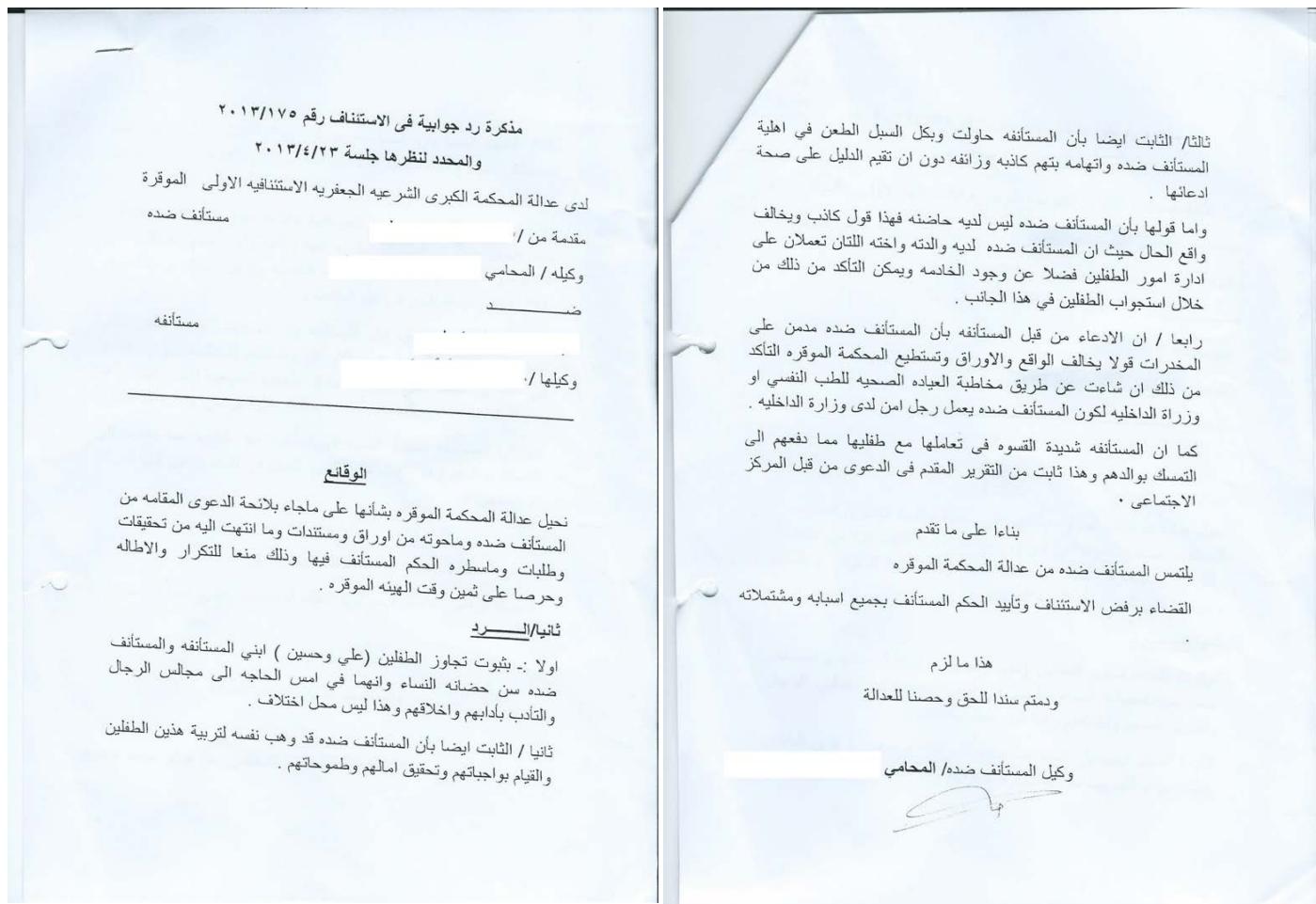
Custody

A husband and wife, with two children, filed a case in 2008 against their son-in-law claiming he was violent with his daughter and refused to allow her to visit her family.

Another case was filed from the wife after her husband was jailed repeatedly for drug use and fighting.; a divorce was granted in 2010.

According to Sharia law, the boys aged 10 and 12 are in the custody of their father even though he is in jail. The wife filed a case in April 2013 to fight for the custody of the children, arguing that the father is not in acceptable shape to care for the children as he is scheduled to serve in prison until 06/12/2013.

The case was rejected, and the boys remained in the custody of their jailed father.



Child Visitation Rights

A Bahraini mother was divorced in 2005; she was divorced when her daughter was only 2 months old. Since the divorce, the daughter lived with her and her grandmother.

The mother passed away in April 2011 after the uprising and left her daughter with her grandmother.

The father then took his daughter custody, and refused to permit her mother's family to see her.

The grandmother filed a case to see her granddaughter, whom lived with since she was born.

The verdict was to allow her to see grandmother every weekend from Thursday to Saturday afternoon.

Till 2013 the grandmother is unable to see her granddaughter and she filed few cases but the father refuses to obey the verdict.

October 2013 the young girl filed a case, requesting to live with her grandmother, as she never knew or lived with her father before her mother's death.

The case is still currently open.

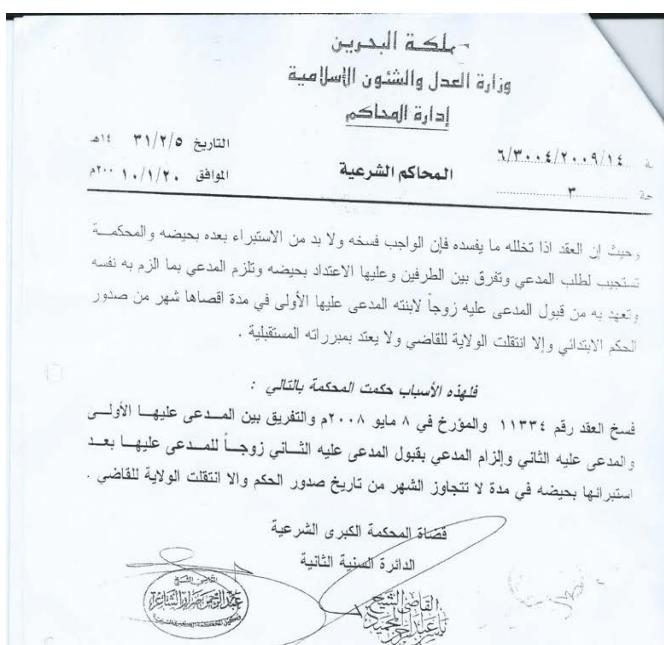
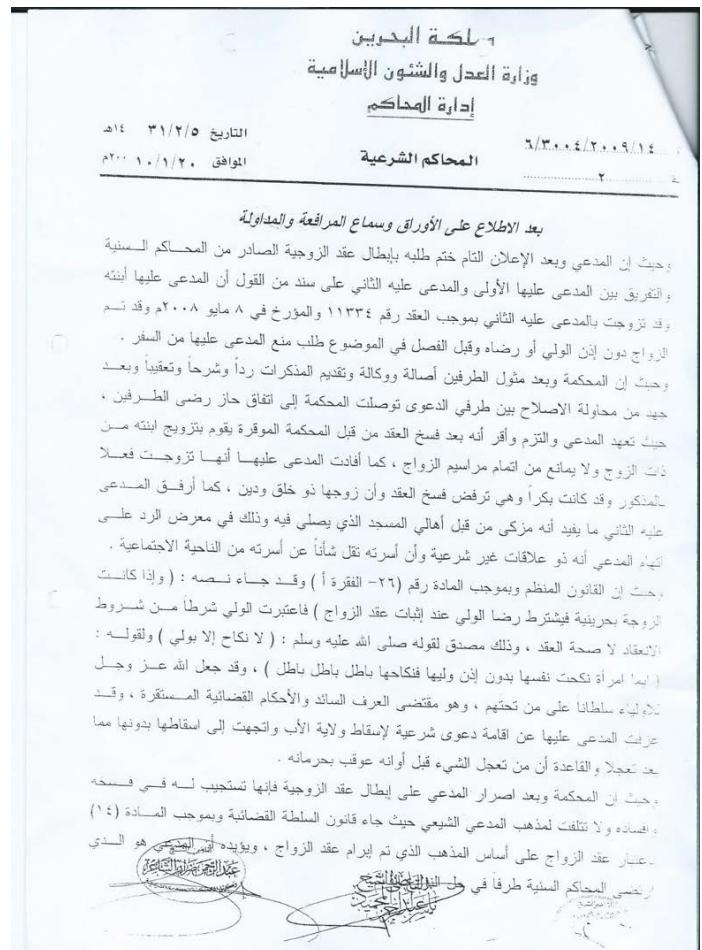
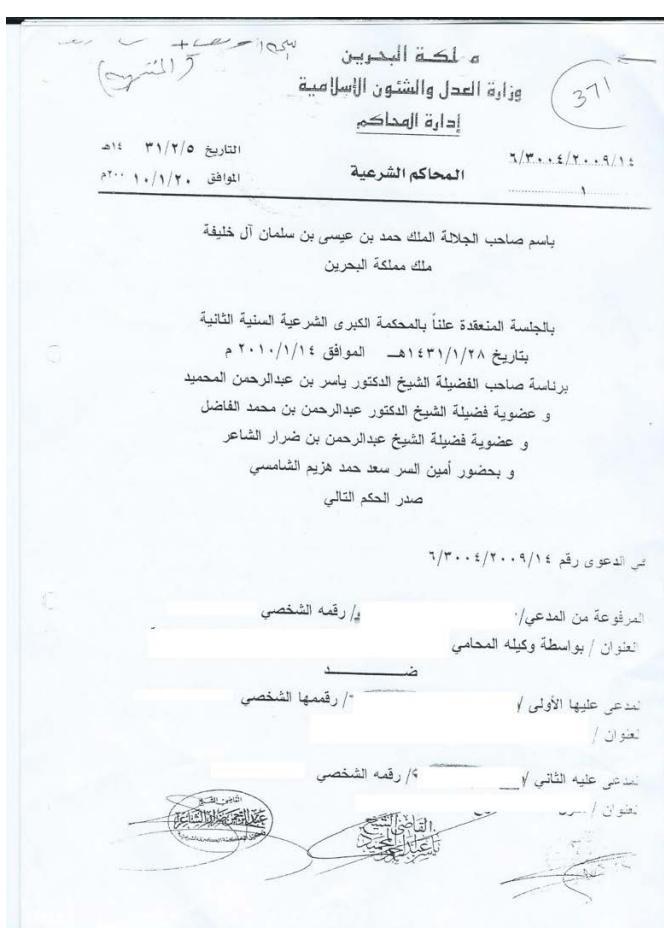
 Lawyer otisam Mohammad Sabbagh <i>law firm and legal advice</i>	إبتسام محمد الصباغ وكيله ومستشاره فاؤيون محاماة واستشارات فاؤيون
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<u>لائحة دعوى مقابلة</u>	
<u>للدعوى الشرعية رقم 7/690/2013/14</u>	
<u>والمحدد لنظرها جلسة 10/8/2013</u>	
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<u>الوقائع</u>	
<ul style="list-style-type: none"> • المدعي كان زوج ابنة المدعي عليها وانمرزوا جهما عن الطفلة (ميريم) من مواليدها 6/2/2005 . • تم الطلاق بين المدعي وابنة المدعي عليها بموجب ويفقة الطلاق المؤرخة في 16/4/2005. • توقيف ابنة المدعي عليها (والدة الطفلة مريم) بتاريخ 4/16/2011. • الطفلة مريم في حضانة والدتها بموجب الحكم الصادر من المحكمة الصغرى الشرعية الجعفرية الأولى في الدعوى الشرعية رقم 14/9/3462/2009. • رفعت المدعي عليها دعوى شرعية أمام المحكمة الصغرى الشرعية المستجدة قيدت تحت رقم 1/3579/2012 ، طلبت في خاتمتها الحكم بتمكينها من رؤية الصغيرة مريم إبتداء من يوم الخميس الساعة الثالثة عصراً إلى يوم السبت الساعة الثامنة مساءً مع المبيت بمنزل المدعي عليها وبتاريخ 5/2/2013 بصدر حكم بعدم اختصاص المحكمة بنظر الدعوى . • المدعي عليها استأنفت الحكم بموجب الاستئناف رقم 15/9/197/2013 ، وحيث إن المدعي تناهى بصدر حكم ضنه في الاستئناف والذي يقضى (بإلغاء الحكم المستأنف الصادر في الدعوى 1/3579/2012 وبعدم اختصاص المحكمة بنظر الدعوى والحكم مجدداً المستجلة رقم 14/9/3462/2009). 	

Forced Divorce

A father of Shia daughter filed a case in 2009 requested the court to divorce his daughter from her Sunni husband in Sunni contract dated May 2008 as she got married without his approval, so the marriage is void.

The father requested to terminate the Sunni marriage contract, even with her rejection of the marriage termination.

The verdict of January 2010 was to terminate the marriage contract and divorce the couple.



Additional Links

A study on forced prostitution in Bahrain:

<http://www.bangkokpost.com/learning/learning-from-news/356294/modern-day-slavery-in-thailand>

Links for information on migrant workers:

<http://www.migrationinformation.org/feature/display.cfm?ID=300>

<http://rawlinsview.files.wordpress.com/2011/04/female-migrant-domestic-workers-2010.pdf>

http://bahrain.usembassy.gov/mobile//news_from_washington/bahrain-trafficking-in-persons-report.html

<http://www.migrant-rights.org/research/7346-deported-from-bahrain-in-2013/>

For reports on prostitution in Bahrain:

<http://www.alarabiya.net/articles/2009/04/04/69881.html>

http://politico.ie/index.php?option=com_content&view=article&id=6781:bahrain-diary-too-much-honky-tonky&catid=248:malachy-browne&Itemid=1013

<http://edition.myjoyonline.com/pages/news/201211/98083.php>

Forced Return

The couple was married in the UK in 1998.

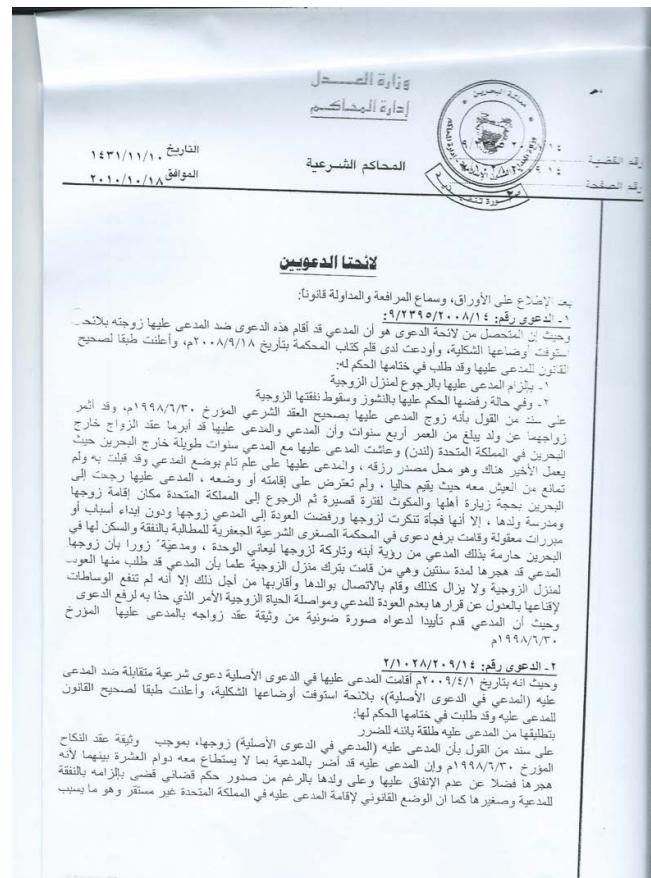
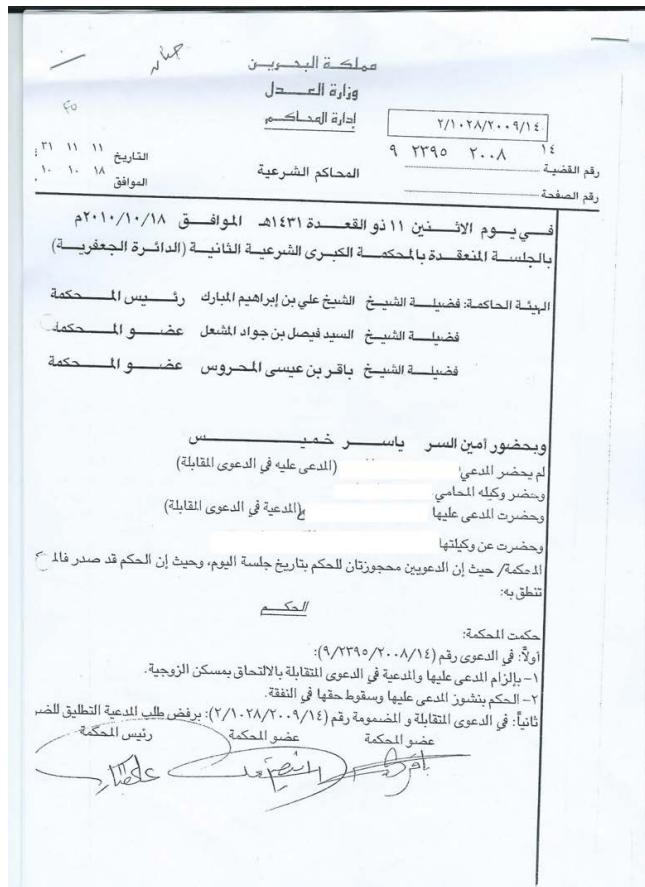
Due to their financial instability in the UK, the wife asked her husband if it might be better to return back to Bahrain.

In 2007, he agreed and requested her to head back to Bahrain along with their 4 year-old son first and he will follow soon after.

She filed a case requesting a divorce in 2009, as he never showed up.

Her case was refused.

The court's verdict was to force her to return back to her husband house in the UK (house of obedience) due of being recalcitrant wife.



Khula

Mother of four filed a case requesting a divorce from her husband, according to case 4234, after 6 years of marriage. In December 2009 and she was granted a retroactive divorce.

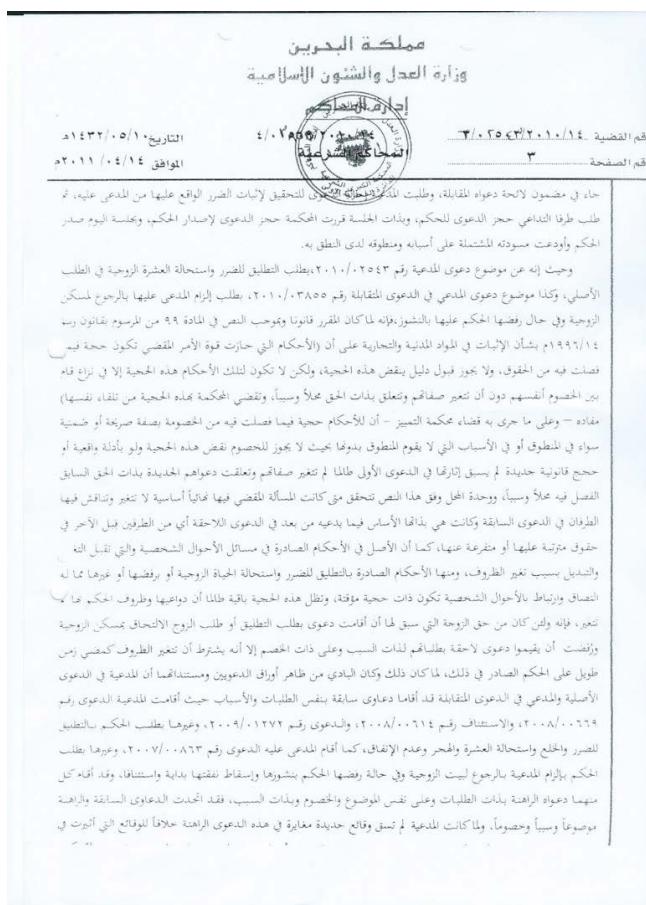
Shortly the husband filed an appeal in January 2010 demanding her return under what is called obedience house.

The appealed was to receive ownership of the house that the family was endowed with from government. The husband had originally agreed that the house be registered in the wife's name.

The appeal was accepted, and the verdict forced the wife to return to her husband.

Another appeal was filed from both, regarding the house. This time both husband and wife lost the appeal, or they have to agree of sharing the house together.

The case is open.



Violence And Rejected Divorce

A mother of 3 girls lived for 26 years with an abusive husband. After 26 years of suffering she decided to file a case for divorce after his violence became worse.

She went to Batelco Violence Centre with marks in her body, and received a report.

Due to the fact that her husband takes psychotherapy medication, the divorce case was rejected. She was informed she can leave the house for protection if she feels that it is necessary.

She filed another appeal for a divorce, which was also rejected.

